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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1707

THE COUNTY OF COOK, A BODY POLITIC AND CORPORATE, AND THE COUNTY COLLECTOR OF COOK COUNTY,
Petitioners,

vs.

NORTHWESTERN UNIVERSITY,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Petitioner herein seeks issuance of a writ of certiorari to review a unanimous decision of the Supreme Court of Illinois (opinion by Justice Schaefer) holding that Northwestern University's Charter, one provision of which exempts property owned by Northwestern from property tax, does not violate the Fourteenth Amendment.[1] Respondent Northwestern University, opposes issuance of a writ of certiorari to review the decision of the Supreme Court of Illinois. The question sought to be presented is not substantial and, in any event, was decided by the Supreme Court of Illinois in a way which is clearly "in accord with

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[1] A copy of the Charter as amended is attached hereto as Appendix A. The decision of the Supreme Court of Illinois appears as Appendix B to the Petition for Writ of Certiorari; citations herein to that decision are to pages in Appendix B of the Petition.

applicable decisions of this court." Rule 19(1)(a) of this Court's Rules. See, e.g., *United States* v. *Maryland Savings-Share Insurance Corp.*, 400 U.S. 4 (1970).

QUESTION PRESENTED

The question sought to be presented is whether Northwestern's Charter exemption from property taxation violates the Fourteenth Amendment by depriving other non-chartered educational institutions of equal protection of the laws or by depriving non-exempt taxpayers of their property without due process of law.

STATEMENT OF THE CASE

Northwestern University received its Charter from the State of Illinois in 1851. The Charter provides that the University's Trustees shall hold its property "solely for the purposes of education, and not as a stock for the individual benefit of themselves or any contributor to the endowment of the same." (App. A, *infra*, p. A-2) It further provides that the University shall have the power to lease its real estate (*id.*, p. A-3):

> "... to grant, bargain, sell, convey, devise, let, place out at interest, or otherwise dispose of the same for the use of said institution in such manner as to them shall seem most beneficial to said institution."

The proceeds derived from leases, like other assets of the University, are to be devoted solely to its enumerated educational purposes (*id.*, p. A-3):

> "Said corporation shall faithfully apply all the funds collected or the proceeds of the property belonging to the said institution, according to their best judgment, in erecting and completing suitable buildings, supporting necessary officers, instructors, and servants, and procuring books, maps,

> charts, globes, and philosophical, chemical, and other apparatus necessary to the success of the institution, and do all other acts usually performed by similar institutions, that may be deemed necessary or useful to the success of said institution, under the restrictions herein imposed."

The Charter also provides that Northwestern "shall not be allowed to hold more than two thousand acres of land at any one time, unless the said corporation shall have received the same by gift, grant or devise", with an additional provision that in the event gifts result in total land holdings of over two thousand acres the University is required to sell the excess within ten years. (*Id.*)[2]

The Charter was amended by the Illinois legislature in 1855 by addition of the following provision: "That all property, of whatever kind or description belonging to, or owned by said Corporation shall be forever free from taxation for any and all purposes." (*Id.*, p. A-6) Later in that same year, the University opened and enrolled its first students.

Northwestern's Charter was granted pursuant to Article 9, Section 3 of the Illinois State Constitution of 1848, which permitted grants of tax exemption applicable to all property owned by the chartered institution, including property leased to provide revenues to carry out the institutional purpose. In 1848, Illinois was an economically undeveloped State, with a large debt and insufficient tax revenues to establish and maintain educational institutions. The State met this problem by incorporating a number of private schools, which were authorized to own and lease property and to use the proceeds to support their educational pro-

[2] The University's land holdings have never approached the ceiling of 2,000 acres. Northwestern, in the early years of its history, owned approximately 680 acres of land in Cook County. It owns only 434 acres today, of which only 71 acres are leased to provide revenues for educational purposes.

grams. An integral part of this approach was the pe
manent exemption from taxation accorded those school
which served the same function as an endowment of prop
erty producing annual revenues. At every session of th
Illinois legislature between 1848 and 1870, charters wer
enacted creating educational institutions throughout th
State with full exemption from taxation for property hel
by them.[3]

By 1870, the situation had changed. The change wa
aptly described by the Supreme Court of Illinois in it
opinion as follows (Petition, App. B, pp. 40-41):

> "Prior to the adoption of the constitution of 1870, a large number of corporate charters had been granted by the legislature to private educational institutions. There were more than 80 such charters which contained some provision for tax exemption. Only a relatively small number of these institutions have survived. . . . The purpose of the tax exemptions was, of course, to bring about the donation of money or property to the institutions.
>
> "With the adoption of the constitution of 1870 the situation changed dramatically. That constitution prohibited the legislature from granting to any corporation any special privilege (art. IV. sec.

[3] Cook County in its Petition for Writ of Certiorari erroneousl
asserts that Northwestern received its Charter pursuant to an ac
passed by the General Assembly in 1849, entitled "an Act to Inco
porate Institutions of Higher Learning in Illinois." (Petition, pp
6-7.) The 1849 Act applied only to institutions of learning inco
porated *without* a special charter from the legislature by filing
certificate containing certain information with the Secretary o
State and the recorder of the county in which the institution was t
be established. Northwestern University was not incorporated unde
the provisions of the 1849 Act (it did not follow the procedures se
forth in the 1849 Act, nor was it subject to the acreage limitation
contained in that Act). Northwestern, instead, was granted a spe
cial charter from the legislature, which was effective of its ow
force.

> 22), and with respect to exemption from taxation provided that such 'property as may be used exclusively for * * * school * * * purposes, may be exempted from taxation; but such exemption shall be only by general law.' (Art. IX, sec. 3.) And by general law the legislature exempted only that property of schools which was used exclusively for school purposes, and not leased or otherwise used with a view to profit.
>
> "Educational institutions established subsequent to 1870 therefore do not enjoy the same kind of tax exemption that is enjoyed by Northwestern University."

Following adoption of the constitution of 1870 and enactment of a statute granting exemption only with respect to property used for school purposes, Cook County levied taxes on certain properties owned and leased by Northwestern. Northwestern objected to the taxes on the ground that its property was exempt from taxation under its Charter. The case reached this Court which ruled, in *University* v. *People*, 99 U.S. 309 (1878), that the Charter was a binding contract protected by the obligation of contracts clause (99 U.S. at 322). This Court specifically ruled that the 1848 Illinois State Constitution (Article 9, Section 3), which granted to the General Assembly power to exempt from taxation "such property as they might deem necessary for school purposes", was broad enough to permit exemption of property which was leased and the revenues used for school purposes (99 U.S. at 324):

> "The purpose of a college or university is to give youth an education. The money which comes from the sale or rent of land dedicated to that object aids this purpose. Land so held and leased is held for school purposes, in the fullest and clearest sense."

Accordingly, this Court held that the Illinois General Assembly was authorized by the Constitution of 1848 to grant the Charter, and that the Charter was a valid contract protected by the obligation of contracts clause. As a result of this decision and two subsequent decisions by the Illinois Supreme Court, *In re Northwestern University*, 206 Ill. 64 (1903), and *Northwestern University* v. *Hanberg*, 237 Ill. 185 (1908), property owned by Northwestern has not been subject to taxation.

One of the properties owned by Northwestern is the Dee-El Garage, a parking garage, located at 21-29 West Monroe Street, on the south side of Monroe Street midway between State and Dearborn Streets, in Chicago. Since 1951 the garage has been leased and operated by Dee-El Garage, Inc., which has paid annual rentals to Northwestern. These revenues have been used by Northwestern solely for the educational purposes set forth in its Charter.

For the tax year 1967, the County Assessor of Cook County assessed the Dee-El Garage at an amount, after equalization, of $180,484; and on the basis of this assessment, the County Clerk extended taxes in the amount of two installments of $5,219.60 each.[4] The County Collector then issued a tax bill for the amount of such taxes, and, when the taxes were not paid, applied for judgment and order of sale against the property. Northwestern University, as owner of the property, filed its objections in the Circuit Court of Cook County to the 1967 taxes, relying upon its Charter tax exemption.

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[4] More is involved in this case than annual taxes of $10,000 on Dee-El Garage. It is estimated that the financial burden which would be placed directly upon Northwestern by a declaration that the Charter exemption is void with respect to leased properties such as the Dee-El Garage would have the same effect as taking from Northwestern approximately $28,600,000 in endowment funds providing annual income of $1,200,000. This is the equivalent of 480 full tuition scholarships.

On February 3, 1971, the circuit court entered judgment declaring Northwestern's Charter exemption invalid as applied to the Dee-El Garage property, relying upon the Fourteenth Amendment. This decision was unanimously reversed by the Supreme Court of Illinois in its decision dated March 30, 1972, which petitioner asks this Court to review.

ARGUMENT

Northwestern's Charter Exemption Does Not Violate the Fourteenth Amendment.

Cook County contends that Northwestern's Charter exemption from taxation, which was concededly constitutional at the time it was enacted, was invalidated by virtue of the enactment of the Fourteenth Amendment. (Petition, pp. 15, *et seq.*) To support this argument, Cook County cites various authority for the proposition that acts of a state legislature (i.e., the Charter) and the Constitution itself (i.e., the obligation of contracts clause) may be superseded by subsequent amendments to the United States Constitution. (*Id.*, pp. 16-21, 26-29.) However, Cook County simply assumes as its premise that the Fourteenth Amendment would (if applicable) invalidate Northwestern's Charter exemption, and then proceeds at length in its attempt to show that the Fourteenth Amendment is applicable. Cook County thus seeks to divert attention from the total absence of support for its premise that the Charter exemption is inconsistent with either the equal protection clause or the due process clause of the Fourteenth Amendment.

It is well established that the equal protection clause does not preclude differences in legislative treatment but only those which are arbitrary. *Dandridge* v. *Williams*, 397 U.S. 471, 484-487 (1970); *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 489 (1955); *Metropolitan Casualty Insurance Co.* v. *Brownell*, 294 U.S. 580, 586 (1935).

Cook County contends that the equal protection clause is violated because Northwestern and other schools chartered prior to 1870 have broader tax exemptions by virtue of their charters than do schools established under general law subsequent to 1870 by virtue of the general tax exemption statute.[5] However, Northwestern and the other pre-1870 schools which have charter exemptions are in a wholly different position than schools created after 1870 without charters, at a time when the state's constitution, its policy regarding exemptions, and its ability to support higher education directly had all changed. On this point, the Supreme Court of Illinois correctly held as follows (Petition, App. B, pp. 41-42):

> "In our opinion Northwestern's charter tax exemption does not, as the trial court held, violate the equal-protection clause of the fourteenth amendment by arbitrarily discriminating against other educational institutions whose exemptions from taxation are not so broad. The contract with the State affords a rational, indeed, a constitutionally required, distinction between the university and other institutions. The different tax exemption accorded institutions organized after the adoption of the Constitution of 1870 does not alter the situation. . . . 'Just as a State may provide that after a specified date newly established common carriers must obtain state approval before entering into business so as to prevent proliferation of such carriers and excessive use of the State's highways, see

[5] Since Cook County's theory is that colleges founded after 1870 are being unreasonably discriminated against, the consequence of that theory, if it had any merit (which it does not), would be that the "discriminatory" tax laws applied to the post-1870 schools would have to be invalidated—not that the obligation of Northwestern's Charter should be impaired.

It is noteworthy that the supposed victims of discrimination—colleges and universities created after 1870—have not asserted that they are injured by virtue of the existence of the pre-1870 charters.

> *Stanley* v. *Public Utilities Comm'n* [295 U.S. 76, 79 L.Ed. 1311, 55 S.Ct. 628 (1935)], similarly Congress does not exceed its power to tax nor does it violate the Fifth Amendment when it refuses to exempt from tax newly formed corporations, the multiplication of which might burden otherwise valid federal programs.' *United States* v. *Maryland Savings-Share Insurance Corp.* (1970), 400 U.S. 4, 6-7, 27 L.Ed.2d 4, 7-8, 91 S.Ct. 16. See also *Dandridge* v. *Williams* (1970), 397 U.S. 471, 25 L.Ed.2d 491, 90 S.Ct. 1153."

The decision of the Illinois Supreme Court is fully in accord with the applicable decisions of this Court. In *United States* v. *Maryland Savings-Share Insurance Corp.*, 400 U.S. 4 (1970), expressly relied upon by the Illinois Supreme Court (though nowhere mentioned in Cook County's Petition), this Court dealt with a case in which insurers of accounts of shareholders of savings and loan institutions were exempt from taxation if organized before September 1, 1957. Maryland Savings-Share Insurance Corp., established by the Maryland legislature in 1962, claimed that denial to it of tax-exempt status based on the date of its organization was an arbitrary and unconstitutional discrimination. This Court held that different tax treatment for post-1957 corporations was not unconstitutional (400 U.S. at 6):

> "The fact that Congress enacts a statute containing a 'grandfather clause,' which exempts from the general income tax certain corporations organized prior to a specified date, does not of itself indicate that Congress has made an arbitrary classification. Cf. *Stanley* v. *Public Utilities Comm'n*, 295 U.S. 76 (1935); *Sperry & Hutchinson Co.* v. *Rhodes*, 220 U.S. 502 (1911); *Watson* v. *Maryland*, 218 U.S. 173 (1910); *Sampere* v. *New Orleans*, 166 La. 776, 117 So. 827 (1928), *aff'd per curiam*, 279 U.S. 812 (1929). Normally, a legislative classification will

> not be set aside if any state of facts rationally justifying it is demonstrated to or perceived by the courts."

This Court's decision in *Maryland Savings-Share Insurance Corp.* is completely dispositive of the present case. The holding that it is not "an arbitrary classification" to grant an exemption to one corporation but no exemption to another based on different dates of incorporation applies *a fortiori* to sustain the granting of an exemption to one university, and a partial exemption to other universities, depending on whether they were chartered before or after 1870.

In *Stanley* v. *Public Utilities Comm'n*, 295 U.S. 76 (1935), this Court had before it a state statute regulating truckers which exempted from the certification requirement carriers which had provided service prior to a specified date. A carrier which did not meet this requirement challenged the exemption as contrary to the equal protection clause. This Court upheld the exemption of the earlier-established carrier as based upon a rational classification and, thus, not a violation of the Fourteenth Amendment. See also *Southeastern Express Co.* v. *Robertson*, 264 U.S. 535 (1924).

Cook County does not analyze these decisions in its Petition, but instead simply concludes that they "are not applicable," arguing that Northwestern's Charter is not protected by the obligation of contracts clause (Petition, p. 29):

> "From the inception of such a contract every right granted thereunder is subject to the defeasance or limitation compelled by a subsequent amendment to the Federal Constitution. Thus, Northwestern had no 'vested' rights at the time the 14th Amendment was adopted comparable to those affording the basis of the 'grandfather clause' decisions."

This argument makes no sense. For one thing, the "grandfather clause" decisions relied upon by the Illinois Supreme Court stand for the proposition that exemptions or regulations may treat differently the corporations subject thereto, based upon the date of the organization of the subject corporations; and this is so whether or not the exemptions or regulations deal with "vested" contract rights. The insurers subject to the tax exemption in *Maryland Savings-Share Insurance Corp.* did not have a "vested" right to an exemption; the point was that a difference in legislative treatment based on the date when the insurers were established was not an arbitrary classification.

In addition, Cook County's argument that Northwestern's rights under its Charter are "subject to defeasance" is frivolous. This argument is based on an obvious misconstruction of a provision of Section 1 of the Charter authorizing the Trustees to make and alter by-laws:

> ". . . [the 'Trustees of the Northwestern University'] henceforth shall be styled and known by that name, and by that name and style to remain and have perpetual succession, with power to sue and be sued, plead and be impleaded, to acquire, hold and convey property, real, personal, or mixed, in all lawful ways, to have and use a common seal, and to alter the same at pleasure, *to make and alter from time to time such by-laws as they may deem necessary for the government of said institution, its officers and servants, provided such by-laws are not inconsistent with the constitution and laws of this State and of the United States,* and to confer on such persons as may be considered worthy of such academical or honorary degrees as are usually conferred by similar institutions." (Emphasis supplied.)

Cook County argues that this provision of the Charter means that the entire Charter was subject to the Constitu-

tion, including future amendments thereto; that when the Fourteenth Amendment was enacted, it thus superseded any inconsistent provisions of the Charter; that the tax exemption provision of the Charter is inconsistent with the Fourteenth Amendment; and that therefore, *as a matter of contract*, the tax exemption provision was nullified at the time the Fourteenth Amendment became law. (Petition, pp. 13-15.) By this kind of reasoning, Cook County seeks to make the protection afforded by the Charter disappear.

However, the purpose of the quoted provisions of Section 1 of the Charter was to permit the Trustees to make *by-laws* "necessary for the government of said institution, its officers and servants," and to make certain that such *by-laws* as might be adopted would not contravene "the constitution and laws of this State and of the United States." In other words, Northwestern was to be governed subject to the law—just like other institutions. There was no purpose to make the Charter itself subject to repeal or nullification in the event of subsequent amendments to the United States Constitution. The Illinois Supreme Court properly rejected Cook County's contention as follows (Petition, App. B, p. 39):

> "[This contention is] an effort to read into the charter itself some self-defeating ingredient, and thereby to escape the impact of the clause of the Federal constitution which prohibits the impairment of contracts. It is clear that [this] contention which refers to the bylaws of the corporation, has nothing to do with the validity of the tax exemption."

The construction by the Illinois Supreme Court of the Charter granted by the Illinois legislature is clearly correct. In any event, the state court's construction of the state Charter raises no federal question at all, much less a "federal

question of substance" justifying review on writ of certiorari. Rule 19(1)(a) of this Court's Rules.

Cook County also contends that the principle of the "grandfather clause" decisions is not applicable because all of the institutions granted special charters prior to 1870 do not "enjoy identical tax exemption privileges." (Petition, p. 30). The Supreme Court of Illinois, in describing the historical context in which special charters were granted, explained the differences in charter terms as follows (Petition, App. B, p. 40):

> "The charters contained tax exemptions, the terms of which varied, apparently in accordance with the inducement thought necessary to bring about contributions to establish and maintain the institutions."

Cook County's claim essentially is that the state is prohibited by the equal protection clause from making contracts with different parties except on identical terms.[6] However, the Fourteenth Amendment has never been construed as requiring that once a state has made a contract for services on certain terms, it can never constitutionally make a contract with any other party for the same kind of services except on identical terms. Such a construction of the equal protection clause would make it virtually impossible for the states to do business.

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[6] Cook County cites *Chicago Theological Seminary* v. *Illinois*, 188 U.S. 662 (1903), to show that the terms of the pre-1870 charters were not all identical. This Court, in that case, ruled that the charter granted to Chicago Theological Seminary did not extend tax exemption to property other than that "used in immediate connection with the seminary." This Court reaffirmed its decision sustaining Northwestern's Charter in *University* v. *People*, 99 U.S. 309 (1878), and specifically distinguished the Northwestern Charter from that of the seminary, terming the difference between the two charters "intrinsic and material." (188 U.S. at 675.)

Finally, Cook County argued before the Illinois Supreme Court below, and apparently seeks to argue here (Petition, pp. 12, 21), that Northwestern's Charter exemption violates the due process clause of the Fourteenth Amendment because the exemption for Northwestern results in increased taxes for non-exempt taxpayers. No authority was, or is now, cited in support of this argument; and the Illinois Supreme Court rejected it, observing that (Petition, App. B, p. 42):

> "This proposition, if accepted, would invalidate all exemptions, for all of them, to a greater or lesser degree, transfer the burden of taxation to others."

The Illinois Supreme Court was clearly correct. *Cf. Bell's Gap Railroad Co.* v. *Pennsylvania,* 134 U.S. 232, 237 (1890).

CONCLUSION

For the foregoing reasons, Cook County's Petition for Writ of Certiorari does not present any substantial question for decision by this Court and, accordingly, should be denied.

Respectively submitted,

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July, 1972

APPENDIX A

An Act to Incorporate the Northwestern University

SEC. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That Richard Haney, Philo Judson, S. P. Keys, and A. E. Phelps, and such persons as shall be appointed by the Rock River Annual Conference of the Methodist Episcopal Church to succeed them in said office; Henry Summers, Elihu Springer, David Brooks, and Elmore Yocum, and such persons as shall be appointed by the Wisconsin Annual Conference of said church to succeed them; four individuals, if chosen, and such persons as shall be appointed to succeed them by the Michigan Annual Conference of said church; four individuals, if chosen, and such persons as shall be appointed to succeed them by the North Indiana Annual Conference of said church; H. W. Reed, I. I. Steward, D. N. Smith, and George M. Geas, and such persons as shall be appointed to succeed them by the Iowa Annual Conference of said church: four individuals, if chosen, and such persons as shall be appointed to succeed them by the Illinois Annual Conference of said church; A. S. Sherman, Grant Goodrich, Andrew J. Brown, John Evans, Orrington Lunt, J. K. Botsford, Joseph Kitterstring, George F. Foster, Eri Reynolds, John M. Arnold, Absalom Funk, and E. B. Kingsley, and such persons, citizens of Chicago or its vicinity, as shall be appointed by the Board of Trustees hereby constituted to succeed them, be, and they are hereby, created and constituted a body politic and corporate, under the name and style of the "Trustees of the Northwestern University," and henceforth shall be styled and known by that name, and by that name and style to remain and have perpetual succession, with power to sue and be sued, plead and be impleaded, to acquire, hold and convey property, real, personal, or mixed, in all lawful ways, to have and use a common seal,

and to alter the same at pleasure, to make and alter from time to time such by-laws as they may deem necessary for the government of said institution, its officers and servants, provided such by-laws are not inconsistent with the constitution and laws of this State and of the United States, and to confer on such persons as may be considered worthy of such academical or honorary degrees as are usually conferred by similar institutions.

SEC. 2. The term of office of said Trustees shall be four years, but that of one member of the Board for each conference enjoying the appointing power by this act, and term of three of the members whose successors are to be appointed by the Board hereby constituted, shall expire annually, the term of each member of the Board herein named to be fixed by lot at the first meeting of said Board, which Board shall, in manner above specified, have perpetual succession, and shall hold the property of said institution solely for the purposes of education, and not as a stock for the individual benefit of themselves or any contributor to the endowment of the same; and no particular religious faith shall be required of those who become students of the institution. Nine members shall constitute a quorum for the transaction of any business of the Board, except the appointment of President or Professor, or the establishment of chairs in said institution, and the enactment of by-laws for its government, for which the presence of a majority of the Board shall be necessary.

SEC. 3. Said Annual conferences of the Methodist Episcopal Church, under whose control and patronage said university is placed, shall each also have the right to appoint annually two suitable persons, members of their own body, visitors to said university, who shall attend the examination of students, and be entitled to participate in the deliberations of the Board of Trustees and enjoy all the privileges of members of said board except the right to vote.

SEC. 4. Said institution shall remain located in or near the City of Chicago, Cook County, and the corporators and their successors shall be competent in law or equity to take to themselves, in their said corporate name, real, personal, or mixed estate, by gift, grant, bargain and sale, conveyance, will, devise or bequest of any person or persons whomsoever and the same estate, whether real, personal, or mixed to grant, bargain, sell, convey, devise, let, place out at interest, or otherwise dispose of the same for the use of said institution in such manner as to them shall seem most beneficial to said institution. Said corporation shall faithfully apply all the funds collected or the proceeds of the property belonging to the said institution, according to their best judgment, in erecting and completing suitable buildings, supporting necessary officers, instructors and servants, and procuring books, maps, charts, globes, and philosophical, chemical, and other apparatus necessary to the success of the institution, and do all other acts usually performed by similar institutions, that may be deemed necessary or useful to the success of said institution, under the restrictions herein imposed: Provided, nevertheless, that in case any donation, devise, or bequest shall be made for particular purposes accordant with the design of the institution, and the corporation shall accept the same, every such donation, devise, or bequest shall be applied in conformity with the express conditions of the donor or devisor: Provided further, that said corporation shall not be allowed to hold more than two thousand acres of land at any one time unless the said corporation shall have received the same by gift, grant, or devise; and in such case they shall be required to sell or dispose of the same within ten years from the time they shall acquire such title; and on failure to do so, such land over and above the beforenamed two thousand acres, shall revert to the original donor, grantor, devisor, or their heirs.

SEC. 5. The treasurer of the institution and all other agents when required, before entering upon the duties of their appointment, shall give bond for the security of the corporation in such penal sums, and with such securities as the corporation shall approve, and all process against the corporation shall be by summons, and the service of the same shall be by leaving an attested copy thereof with the treasurer at least sixty days before the return day thereof.

SEC. 6. The corporation shall have power to employ and appoint a President or Principal for said institution, and all such professors or teachers, and all such servants as may be necessary, and shall have power to displace any or such of them, as the interest of the institution may require, to fill vacancies which may happen, by death, resignation, or otherwise, among said officers and servants, and to prescribe and direct the course of studies to be pursued in said institution.

SEC. 7. The corporation shall have power to establish departments for the study of any and all the learned and liberal professions in the same; to confer the degree of doctor in the learned arts and sciences and *belles-lettres,* and to confer such other academical degrees as are usually conferred by the most learned institutions.

SEC. 8. Said corporation shall have power to institute a board of competent persons, always including the faculty, who shall examine such individuals as may apply, and if such applicants are found to possess such knowledge pursued in said institution, as in the judgment of said board renders them worthy, they may be considered graduates in course, and shall be entitled to diplomas accordingly on paying such fee as the corporation shall affix, which fee, however, shall in no case exceed the tuition bills of the full course of studies in said institution; said examination board

may not exceed the number of ten, three of whom may transact business, provided one be of the faculty.

SEC. 9. Should the corporation at any time act contrary to the provisions of this charter, or fail to comply with the same, upon complaint being made to the Circuit Court of Cook County, a *scire facias* shall issue, and the circuit attorney shall prosecute in behalf of the People of this State for forfeiture of this charter.

This act shall be a public act, and shall be construed liberally in all courts, for the purposes herein expressed.

FIRST AMENDMENT

An Act to Amend an Act Entitled "An Act To Incorporate the Northwestern University" Approved January 28, 1851

SEC. 1. Be it enacted by the people of the State of Illinois represented in the General Assembly: That John L. Smith, Aaron Wood, Luther Taylor, and William Graham and such persons as shall be elected to succeed them by the Northwestern Indiana Conference of the Methodist Episcopal Church, be, and they are hereby constituted Members of the Board of Trustees of the Northwestern University.

SEC. 2. No spirituous, vinous or fermented liquors shall be sold under license, or otherwise within four miles of the location of said University, except for Medicinal, Mechanical, or Sacramental purposes, under a penalty of twenty-five dollars for each offense, to be recovered before any Justice of the Peace of said County in an action of debt, in the name of the County of Cook, *Provided* that so much of this Act as relates to the sale of intoxicating drink within four miles may be repealed by the General Assembly whenever they may think proper.

SEC. 3. The said Corporation shall have power to take, hold, use and manage, lease and dispose of all such property as may in any manner come to said Corporation charged with any trust, or trusts, in conformity with trusts, and direction, and so execute all such trusts as may be confided to it.

SEC. 4. That all property of whatever kind or description belonging to, or owned by said Corporation shall be forever free from taxation for any and all purposes.

SEC. 5. This Act shall be a public Act, and take effect from and after its passage.